

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 23 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Subscriber Carrier)
Selection Changes Provisions of the)
Telecommunications Act of 1996)
)
Policies and Rules Concerning)
Unauthorized Changes of Consumers)
by Long Distance Carriers)

CC Docket No. 94-129

OPPOSITION OF THE RURAL LECs TO AT&T

The Rural LECs¹, pursuant to Sections 1.429(f) and 1.4(b)(1) of the Federal Communications Commission's ("FCC" or "Commission") rules, 47 C.F.R. §§1.429(f) and 1.4(b)(1), hereby submit their Opposition to "AT&T Corp. Petition for Partial Reconsideration or, in the Alternative, for Clarification" ("Reconsideration Petition") in the above-captioned proceeding, which was filed with the Commission March 18, 1999.² Rural LECs oppose AT&T's request that the Commission amend the preferred carrier freeze ("PCF") portion of its Second Report and Order³ because AT&T's proposed changes would render the PCF option meaningless.

In its Second Report and Order, the Commission established strict guidelines under which

¹ The Rural LECs are a coalition of small, rural local exchange carriers (LECs), some of which also operate affiliated, small IXC's.

² FCC Public Notice Report No. 2332, rel. June 1, 1999, 64 Fed. Reg. 30520 (June 8, 1999).

³ Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policy and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, rel. Dec. 23, 1998, 64 Fed. Reg. 7746, as corrected, 64 Fed. Reg. 9219 (Feb. 16, 1999) ("Second Report and Order").

LECs may offer their subscribers the option of "freezing" their preferred carrier.⁴ Briefly, where a subscriber requests a PCF for a particular service (local exchange, intraLATA/intrastate toll, interLATA/interstate toll, international toll), the LEC may not change the preferred carrier without the subscriber's express permission, provided in the manner prescribed by the FCC's rules. Once a PCF is in place, the preferred carrier may not be changed - inadvertently or fraudulently - without the subscriber's knowledge and assent. The PCF option thereby provides a level of protection against slamming, as the FCC noted in the Second Report and Order: "we believe that preferred carrier freezes are a useful tool in preventing slamming."⁵

In arriving at its detailed requirements for soliciting, establishing and lifting a PCF, the Commission balanced consumer benefits of a freeze program against potential for anti-competitive behavior by executing carriers, i.e., LECs. Thus, the PCF rules incorporate safeguards against anticompetitive abuse.

In its Reconsideration Petition, AT&T asks the Commission to institute what it characterizes as additional anti-competitive "safeguards." These supposed safeguards so thoroughly undermine the PCF option that their true intent - to eviscerate the freeze program - is transparent. Accordingly, Rural LECs oppose all of AT&T's proposed changes to the PCF rules as unnecessary, pro-IXC limitations, which would render the PCF option totally ineffectual. The Commission previously rejected AT&T's suggestions and Rural LECs urge that they be rejected again as nothing more than an effort to render the PCF program useless as a means of preventing slamming.

⁴ Whether a subscriber chooses to institute a freeze of his/her preferred carrier(s) is entirely within his/her discretion.

⁵ Second Report and Order at para. 124.

AT&T'S PROPOSED CHANGES SHOULD BE REJECTED BECAUSE THEY WOULD UNDERMINE THE PURPOSE AND EFFECTIVENESS OF THE PREFERRED CARRIER FREEZE OPTION

Direct Carrier Submission of Freeze Order

The crux of the PCF program is that a preferred carrier change can occur only with the customer's explicit approval: "the essence of the preferred carrier freeze is that a subscriber must specifically communicate his or her intent to request or lift a freeze." ⁶ This assures that a carrier or other third party cannot inadvertently or fraudulently change a subscriber's preferred carrier. Yet, AT&T recommends that the Commission allow freezes and freeze changes to be requested by toll carriers with independent verification. Clearly, allowing a third party to institute or eliminate a freeze renders the freeze option meaningless. Methods of independent verification of carrier changes outside of the PCF program are irrelevant, and AT&T's attempt to draw a parallel between the two circumstances is ludicrous.

The FCC's rejection of an independent verification of a carrier-submitted freeze change is rationally related to the Commission's objective of deterring slamming. As the Commission noted, "the limitation on lifting preferred carrier freezes gives the freeze mechanism its protective effect."⁷ The Commission rejected a similar suggestion by MCI that a third party verification of a carrier change alone should be sufficient to lift a freeze because if it were allowed, "subscribers would gain no additional protection from the implementation of a preferred carrier freeze."⁸

⁶ Second Report and Order at para. 131.

⁷ Id.

⁸ Id.

AT&T's argument that the FCC must adopt the Michigan PSC's approach to verification of carrier changes, including freezes, is also erroneous. Assuming the Michigan PSC directed LECs to accept carrier change orders, including freezes, as AT&T describes in its petition, it does not follow, as AT&T contends, that "third party verification of carrier-submitted freeze orders and changes [are] fully sufficient" to meet the Commission concerns about slamming.⁹ This ignores the statutory standard under which FCC rulemaking decisions are made and appears to suggest that the FCC must adopt a state regulatory standard, in which case it stands the basic precept of federal preemption on its head.

Automated Handling of Freeze Orders and Changes

AT&T argues that automated means "must" also be provided for customers to register freezes and change orders to enable customers to order changes outside of normal business hours. Again, AT&T incorrectly argues that because change verification procedures provide for electronic verification, the Commission must permit freezes orders to be changed electronically as well. Once again, AT&T is ignoring the fact that the Commission's rules for lifting a freeze are rationally related to the purpose of the freeze - to give the subscriber more control over his/her carrier selection and prevent slamming.

AT&T's argument that arrangement of a three-way call is a "cumbersome" process, which will deter or delay a carrier change, is simply not credible. In any event, the FCC has stated that the three-way call option can be used to confirm that a freeze has been imposed.¹⁰

⁹ Reconsideration Petition at 18 (emphasis supplied).

¹⁰ Second Report and Order at para. 133.

Identification of Frozen Accounts

The Commission declined to require LECs administering PCF programs to make subscriber freeze information available to other carriers because the FCC expects that under the new PCF rules, more subscribers will know whether a PCF is in place.¹¹ This position is supportable, not arbitrary and capricious, and therefore it should stand.

On the other hand, AT&T's argument that the Commission's decision not to require LECs to make subscriber/carrier freeze information available gives LECs "exclusive access" to information, specifically which subscribers have freezes in place, is patently absurd. For a PCF program to work, the LEC must have subscriber and preferred carrier information. The safeguards against the LEC using this information for anti-competitive purposes are already built into the PCF rules. AT&T's "safeguards" are therefore unnecessary. Notably, AT&T does not document any instance in which information obtained in connection with implementing a freeze was used for anti-competitive purposes since the new PCF rules went into effect, April 29, 1999.

Again, AT&T's argument that the three-way calling option for clarifying a subscriber's status vis a vis a freeze is unnecessarily cumbersome for all parties, particularly for LECs is unpersuasive. What is cumbersome for LECs and their subscribers is the time and cost involved when slamming occurs.

¹¹ *Id.*

CONCLUSION

Not surprisingly, all three of AT&T's recommended changes, which the Commission correctly rejected below, would make it easier for unauthorized carrier changes to occur. AT&T's recommendations should be rejected not only because the Commission has already correctly rejected them, but also because if adopted, the proposals would negate the benefits to consumers of the freeze program.

Accordingly, the Commission should reject AT&T's proposed changes to the preferred carrier freeze portion of its anti-slamming rules.

Respectfully submitted,

The Rural LECS



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June 23, 1999

CERTIFICATE OF SERVICE

I, Teresa Rhea, do hereby certify that on June 23, 1999, I caused one copy of the Opposition of the Rural LECs to AT&T to be served by first class mail on all parties on the attached services list:



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